STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Papan

Sponsor:

Bill Number: AB 926

Related Bills: See Legislative History

Introduced February 14, 2023, and Amended March 16, and April 13, 2023

SUBJECT

Employer-Assisted Housing Credit

SUMMARY

The bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit for the value of qualified land or property donated to a qualified nonprofit organization by an employer for the construction of affordable housing, as defined, for taxable years beginning on or after January 1, 2023, and before January 1, 2028.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The bill, as introduced on February 14, 2023, would have made nonsubstantive changes to the research credit allowed under the CTL.

The March 16, 2023, amendments removed provisions of the bill relating to the research credit and replaced them with the provisions discussed in this analysis.

The April 13, 2023, amendments removed the employer's costs paid or incurred for the construction of qualified housing and the investment in employer-assisted housing programs from the credit base; revised the definition of affordable housing to specify that developments would need 25% or more of the units to be sold or rented to low- or middle-income families, and that the employer's low-income employees would have first priority to purchase or rent the units; and added definitions for "qualified land or property" and "qualified nonprofit organizations."

This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to encourage employers to contribute to solving the labor shortage and housing unaffordability problems.

ANALYSIS

This bill would provide a tax credit for an unspecified amount of the value of qualified land or property donated to a qualified nonprofit organization by an employer during the taxable year for the construction of affordable housing for each taxable year beginning on or after January 1, 2023, and before January 1, 2028.

For purposes of this bill, the following terms would apply:

- "Affordable housing" would mean housing developments in which 25% or more of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to persons or families of low or moderate income, as defined in Health and Safety Code (HSC) section 50093, which generally means persons and families whose income does not exceed 120% of the area median income, and in which employees who are individuals of low income have first priority to purchase or rent the units.
- "Qualified land or property" would mean land or property that is deed restricted to ensure that the affordable housing units, if rented, must be made available to individuals and families of low income for a period of 55 years or more, or if the units are owned and deed restricted to ensure the continued affordability of all affordable ownership units for a period of 45 years.
- "Qualified nonprofit organization" would mean a nonprofit charitable organization exempt from federal income tax pursuant to Internal Revenue Code section 501(c)(3) that constructs affordable housing.

Any deduction otherwise allowed for any amount paid or incurred by the taxpayer upon which the credit is based would be reduced by the amount of the allowed credit.

The unused credit could be carried over to the following taxable year.

The bill provides that the goal, purpose, or objective of the credit is to encourage employers to contribute to solving the labor shortage and housing unaffordability problems by providing a tax incentive, and that the performance indicators for the Legislature to use in determining whether the credit achieves this goal is the number of taxpayers allowed the credit and the total dollar value of credits allowed.

The bill would require the Franchise Tax Board (FTB) to report to the Legislature by November 1, 2024, and annually thereafter, the number of taxpayers and the total dollar value of the allowed credits for the most recent taxable year. The FTB would be required to file this report in compliance with Government Code section 9795, Reports to the Legislature.

The Revenue and Taxation Code (RTC) section 41 reporting requirements would be treated as an exception to the general prohibition against disclosure of confidential taxpayer information.

The credit would be repealed on December 1, 2028.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2023, and before January 1, 2028.

Federal/State Law

Federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits, hiring credits). These credits are generally designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise be undertaken.

There is currently no comparable provision in federal or state law.

Implementation Considerations

The department has identified the following implementation considerations and is available to work with the author's office to resolve these and other considerations that may be identified.

Currently, the bill does not provide the credit percentage of the value of qualified land or property donated that would qualify for the credit. To ensure the bill can be implemented as intended by the author, it is recommended that the author amend Sections 17057.7(a) and 23610.7(a) to insert the percentage allowed and replace "value" with "fair market value" or another measure of value for the taxpayer.

This bill uses undefined terms, "individuals of low income" within the definition of affordable housing and "deed restricted" within the definition of qualified land or property. The absence of definitions could lead to confusion for taxpayers. For clarity, the author may wish to amend the bill to define these terms.

The definition of "affordable housing" requires that 25% or more of the housing development may be purchased or rented on a basis that is affordable to persons or families of low or moderate income. It is unclear what would be considered affordable to persons or families of low or moderate income, and who would make the determination.

Typically, credits involving areas for which the department does not have the expertise, i.e., affordable housing qualifications defined under the HSC, are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

This bill requires the FTB to prepare a report on the performance of the credit "allowed" by this bill on or before November 1, 2024. Generally, the information the FTB would have available is the credit "claimed." In addition, if the author's intent is to review a report that contains complete information for the 2023 taxable year, it is recommended that the reporting due date be extended to April of 2026. This date allows time for the FTB to complete processing of both personal income tax and corporation returns that file on a fiscal year basis. Corporate fiscal filers that file on extension, may file as late as October 15, 2025. The department needs approximately six months to complete return processing and to compile the needed data to prepare a report. As a result, it is recommended that the reporting due date be no earlier than April of 2026 to provide information for the 2023 taxable year. If the reporting due date remains unchanged, the report would include the information available as of 6 months prior to the date the report is due.

Technical Considerations

For consistency of terminology, the following edits are recommended:

- In Sections 17057.7(a) and 23610.7(a), "For ~~each~~ taxable year***s*** beginning on or after January 1, 2023, and before January 1, 2028,…"
- In Sections 17057.7(b)(2) and 23610.7(b)(2), "'Qualified land or property' means land or property that is deed restricted to ensure that the affordable housing units, if rented, shall be made available to individuals and families of low income for a period of 55 years or more***,*** or if the units are owned***,*** ~~and deed restricted to ensure the continued affordability of all affordable ownership units for a period of 45 years~~ *shall be made available to individuals and families of low income for a period of 45 years or more*."
- "Employer" and "taxpayer" are used interchangeably in this provision. For consistency, it would be best to use one term throughout the provision.

Policy Considerations

This credit would be allowed for the value of donated qualified land or property for the construction of affordable housing either inside or outside of California. If this is contrary to the author's intent, the author may wish to amend the bill.

In addition, this credit would be allowed to be claimed upon the transfer of the property to the qualified nonprofit organization. However, that could be several years prior to the land being used as intended. In this situation, the credit would be allowed, while the land may not ultimately be used timely, or at all, in the manner intended. If this is contrary to the author's intent, the author may wish to amend the bill.

This bill would provide a carryover period of one year. As a result, any unused credit would be lost if the taxpayer is unable to utilize the entire credit amount in the year claimed and the year after. Generally, experience shows that credits are exhausted within five to eight years of being earned. The author may wish to amend the bill to allow a longer carryover period.

LEGISLATIVE HISTORY

AB 832 (Gipson, 2019/2020) would have, under the PITL and the CTL, created an allocated tax credit for amounts paid or incurred by a taxpayer to a qualified developer for the development of a qualified low-income housing project. AB 832 did not pass out of the Assembly by the constitutional deadline.

AB 2999 (Bonta, 2017/2018) would have, under the PITL and the CTL-, allowed a tax credit for donated qualified land or property for the construction of affordable housing. AB 2999 did not pass out of the Assembly Appropriations Committee by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would allow a tax credit for an unspecified amount of the value of qualified land or property donated to qualified nonprofit organization by an employer for the construction of affordable housing.

To estimate the revenue impact both the frequency of property donated by an employer to a qualified nonprofit organization for the construction of affordable housing and the value of the donated land or property must be known. Because it is difficult to predict the frequency and the value of future property donations, the revenue impact is unknown.

However, it is anticipated that for every $10 million of credits generated, the revenue loss would be approximately $5 million.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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